UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
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Return Date:
May 12, 2009
11:00 A.M.

In re:

Chapter 11

CAPITOL HEALTH MANAGEMENT, INC., et al.

Case No. 08-13934
Through 08-13940 (PCB)

Debtors.

Jointly Administered

-- x

**DEBTORS' RESPONSE TO THE OBJECTION
OF STEMBI CORPORATION TO THE DEBTORS' MOTION
ASSUME CERTAIN REAL PROPERTY LEASES**

**TO THE HONORABLE PRUDENCE C. BEATTY,
UNITED STATES BANKRUPTCY JUDGE:**

The Debtors herein, Capital Health Management, Inc. together with its affiliates and related debtors (collectively, the "Capitol Health Debtors") as and for their response to the Objection (the "Objection") filed by Stembi Corporation ("Stembi") represent and show the Court as follows:

1. The Debtors have moved to assume their remaining commercial leases, and understood that no rents were owed to any of the affected landlords. Although the Debtors have occupied their administrative offices at 22-02 Steinway Street, Astoria, NY (the "Steinway Lease") since 2002 without any issue raised by the Stembi that arrears were owed, Stembi has now filed an Objection to the motion alleging, for the first time, relatively significant arrears.

2. The Debtors were astounded and surprised to receive Stembi's Objection, and dispute its version of the facts. As set forth in the letter of

Mr. Robert Acquino, annexed hereto as Exhibit "A", Stembi consistently charged the Debtors $5,000 per month for the office suite on the first floor and $3,600 per month for the two offices on the second floor. These monthly charges remained in place from 2002 until November, 2007, when a meeting occurred between the Acquino family and the landlord's principal, Dr. Reno DiScala, to increase the rent slightly.

3. As the accompanying letter indicates, the rent for the first floor space was increased by $500 to $5,500 per month, while the rent for the second floor space was increased by $400 to $4,000 per month. After these increases went into effect, the Debtors have religiously made all payments due under the agreement with Dr. DiScala, including May 2009 rents, and were never previously informed of any discrepancy. Indeed, it is noteworthy that in all these years, Stembi never made any claim for any delinquencies or unpaid rent escalation.

4. Furthermore, Dr. DiScala is not a stranger to the Debtors, as he worked for one of the Debtors (Boro Medical P.C.) from 2002-2008.

5. While Stembi references a rider to the lease relating to various rent schedules and escalations in its Objection, it should be noted that the rider was never actually signed by the Debtors. In point of fact, the Debtors never saw the rider until receipt of the Objection, and have no prior knowledge of it.

6. Equally important, the Debtors always had access to the basement at the Steinway premises without additional rent. The Debtors have

used the basement space for storage and to house its computer servers. At no time did the Landlord ever deny the Debtors use of the basement or independently charge any rent for the basement. Accordingly, Stembi's unilateral imposition of a $5,000 per month charge for the basement is taken from thin air.

7. At worst, disputed facts exist as to whether the rider is effective or has been superceded by the parties' actual course of conduct or superceding agreement.

WHEREFORE, the Debtors respectfully request that the Court overrule the Stembi Objection.

Dated: New York, New York
May 11, 2009

GOLDBERG WEPRIN FINKEL
GOLDSTEIN LLP
Attorneys for the Debtors
1501 Broadway, 22nd Floor
New York, New York 10036
(212) 221-5700

By: ______________________
KEVIN J. NASH

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EXHIBIT A

CAPITOL
HEALTH MANAGEMENT, INC.
AN ADMINISTRATIVE SERVICES ORGANIZATION

May 11, 2009

Kevin J. Nash, Esq.
Goldberg Weprin Finkel Goldstein LLP
1501 Broadway-22nd Floor
New York, NY 10036

Dear Kevin,

Pursuant to your request, this is to serve as documentation regarding the Stembi Corp. lease for the premises at 22-02 Steinway Street Astoria, NY 11105.

Beginning in 2002, the rent for the first floor (1 office suite) was $5,000.00 per month. The second floor (2 office suites) was $3,600.00 per month. On or about November 2007 at a meeting in Dr. Robert Aquino's office, (my son), Dr. Reno DiScala requested a rent increase for both floors. The first floor was increased by $500.00 for a total of $5500.00 per month and the second floor was increased by $400.00 bringing it to $4000.00 per month (See Attachment 1-4.) This was a verbal agreement and at no time was a "Rider" mentioned or for that matter that we were paying the wrong amount for all these years as per their allegation in their objection. I am enclosing copies of checks to show when the increase took place.

After a careful review of our documents we have the original lease with nothing attached to it. Since 2002, they have cashed all checks without ever disputing any of the amounts.

If you require additional information please do not hesitate to contact me.

Sincerely,

Robert B. Aquino

Mr. Robert Aquino

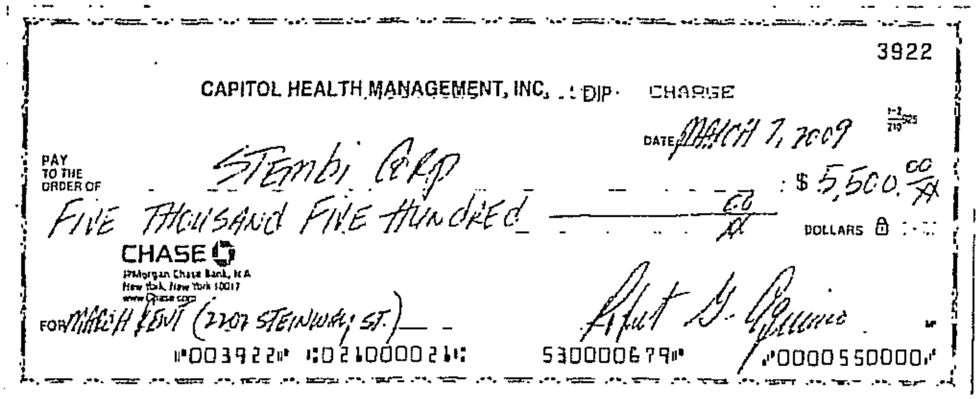
22-02 STEINWAY STREET ASTORIA, NEW YORK 11105
TEL: 718.423.0808 FAX: 718.204.6866
www.capitolhealthmgmt.com

Attachment #1

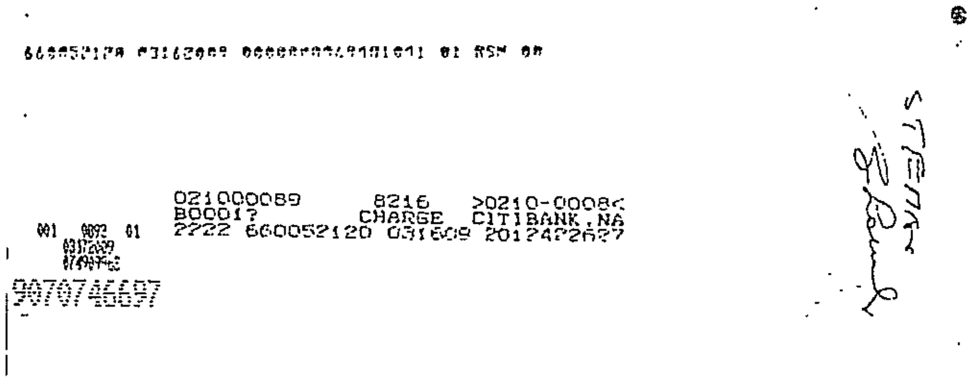
Chase Online

Capitol Health Mgmt (...0679)

Check Number: 3922 **Post Date:** 03/17/2009 **Amount of Check:** $5,500.00


3922
CAPITOL HEALTH MANAGEMENT, INC. DIP CHARGE
DATE MARCH 7, 2009
PAY TO THE ORDER OF Stembi Corp
$ 5,500.00/xx
FIVE THOUSAND FIVE HUNDRED 00/xx DOLLARS
CHASE
JPMorgan Chase Bank, N.A. New York, New York 10017 www.Chase.com
FOR MARCH RENT (2207 STEINWAY ST.)
003922 021000021 530000679 0000550000

Need help printing or saving this check?


021000089 8216 >0210-0008<
B0001? CHARGE CITIBANK, NA
2222 660052120 031609 2012472627
9070746697
STEMBI

Need help printing or saving this check?

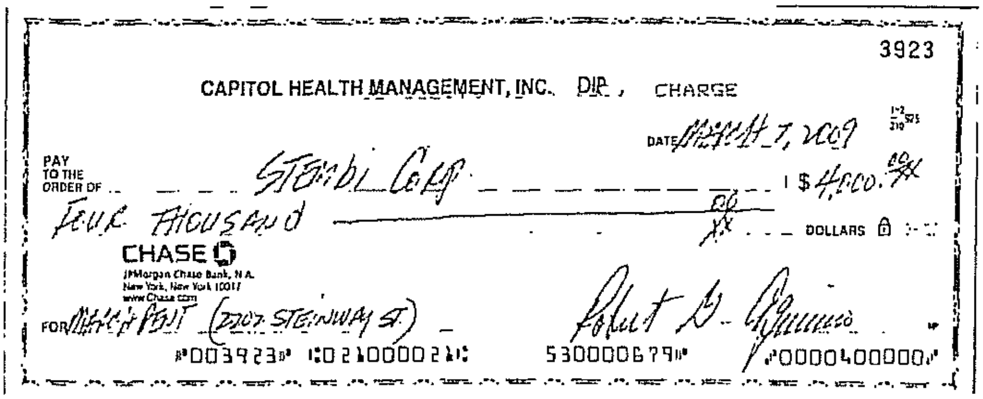
© 2009 JPMorgan Chase & Co.

Attachment #2

Chase Online

Capitol Health Mgmt (...0679)

Check Number: 3923 **Post Date:** 03/17/2009 **Amount of Check:** $4,000.00


3923

CAPITOL HEALTH MANAGEMENT, INC. DIP, CHARGE

DATE March 7, 2009

PAY TO THE ORDER OF Stembi Corp $4,000.00/xx

Four Thousand 00/xx DOLLARS

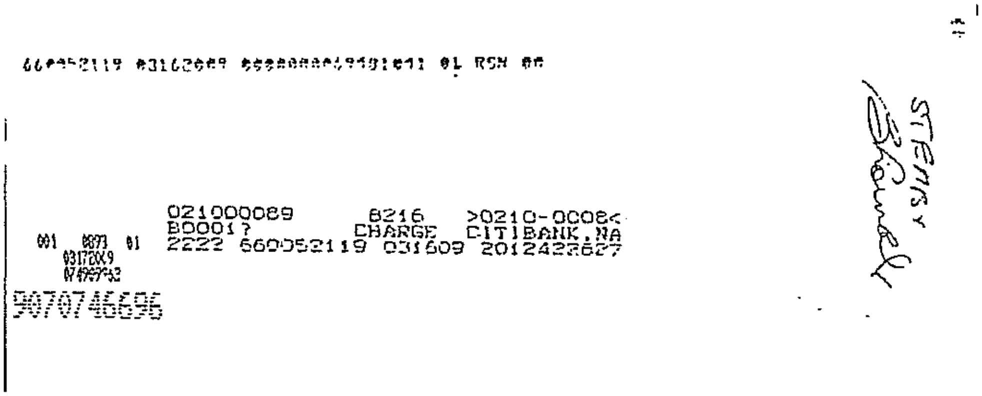
CHASE

JPMorgan Chase Bank, N.A.
New York, New York 10017
www.Chase.com

FOR March Rent (2207 Steinway St.)

⑈003923⑈ ⑆021000021⑆ 530000679⑈ ⑈0000400000⑈

Need help printing or saving this check?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B0001? CHARGE CITIBANK,NA
2222 660052119 031609 2012422627

9070746696

Need help printing or saving this check?

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Attachment #3

3420

CAPITOL HEALTH MANAGEMENT, INC. 570 02 011508 CHARGE

DATE JAN. 7, 2008 1-2/210 925

PAY TO THE ORDER OF Stembi Corp. $ 4,000.00/XX

FOUR THOUSAND 00/XX DOLLARS

CHASE
JPMorgan Chase Bank, N.A.
New York, New York 10017
www.Chase.com

FOR JAN. RENT (2202 STEINWAY ST.)

Robert G. Aquino MP

⑈003420⑈ ⑆021000021⑆ 530000679⑈ ⑈0000400000⑈

3419

CAPITOL HEALTH MANAGEMENT, INC. 569 02 011508 CHARGE

DATE JAN. 7, 2008 1-2/210 925

PAY TO THE ORDER OF Stembi Corp. $ 5,500.00/XX

FIVE THOUSAND FIVE HUNDRED 00/XX DOLLARS

CHASE
JPMorgan Chase Bank, N.A.
New York, New York 10017
www.Chase.com

FOR JAN. RENT (2202 STEINWAY ST.)

Robert G. Aquino MP

⑈003419⑈ ⑆021000021⑆ 530000679⑈ ⑈0000550000⑈

Attachment #4

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8470715971

STE71781

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STE71781